

~~HSB 614~~HF 2373 (LSB 5259~~DPHV~~ (41) 86)

~~SENATE~~/HOUSE FILE ~~_____~~2373

BY ~~(PROPOSED SECRETARY OF STATE BILL)~~COMMITTEE ON JUDICIARY
(SUCCESSOR TO HSB 614)

A BILL FOR

An Act relating to the organization and administration of limited partnerships and
limited liability companies doing business in Iowa.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I
UNIFORM LIMITED PARTNERSHIP ACT

Section 1. Section 488.102, subsection 5, Code 2016, is amended by striking the subsection.

Sec. 2. Section 488.102, Code 2016, is amended by adding the following new subsection:

NEW SUBSECTION. 19A. "Registered office" means:

a. With respect to a limited partnership, the office that the limited partnership is required to designate and maintain under section 488.114.

b. With respect to a foreign limited partnership, its principal office.

Sec. 3. Section 488.111, unnumbered paragraph 1, Code 2016, is amended to read as follows:

A limited partnership shall maintain at its ~~designated~~ registered office all of the following information:

Sec. 4. Section 488.114, Code 2016, is amended to read as follows:

488.114 Office Registered office and registered agent for service of process.

1. A limited partnership shall designate and continuously maintain in this state both of the following:

a. ~~An~~ A registered office, which need not be a place of its activity in this state.

b. ~~An~~ A registered agent for service of process.

2. A foreign limited partnership shall designate and continuously maintain in this state ~~an~~ a registered agent for service of process.

3. ~~An~~ A registered agent for service of process of a limited partnership or foreign limited partnership must be an individual who is a resident of Iowa or other person authorized to do business in this state.

Sec. 5. Section 488.115, Code 2016, is amended to read as follows:

488.115 Change of ~~designated~~ registered office or registered agent for service of process.

1. In order to change its ~~designated~~ registered office, registered agent for service of process, or the address of its registered agent for service of process, a limited partnership or a foreign limited partnership may deliver to the secretary of state for filing a statement of change containing all of the following:

a. The name of the limited partnership or foreign limited partnership.

b. The street and mailing address of its current ~~designated~~ registered office.

c. If the current ~~designated~~ registered office is to be changed, the street and mailing address of the new ~~designated~~ registered office.

d. The name and street and mailing address of its current registered agent for service of process.

e. If the current registered agent for service of process or an address of the agent is to be changed, the new information.

2. Subject to section 488.206, subsection 3, a statement of change is effective when filed by the secretary of state.

Sec. 6. Section 488.116, Code 2016, is amended to read as follows:

488.116 Resignation of registered agent for service of process.

1. In order to resign as ~~an~~ a registered agent for service of process of a limited partnership or foreign limited partnership, the agent must deliver to the secretary of state for filing a statement of resignation containing the name of the limited partnership or foreign limited partnership.

2. After receiving a statement of resignation, the secretary of state shall file it and mail a copy to the ~~designated~~ registered office of the limited partnership or foreign limited partnership and another copy to the principal office if the address of the office appears in the records of the secretary of state and is different from the address of the ~~designated~~ registered office.

3. ~~An~~ A registered agency for service of process is terminated on the date on

which the statement of resignation was filed with the secretary of state.

Sec. 7. Section 488.117, subsections 1, 2, and 3, Code 2016, are amended to read as follows:

1. ~~An~~ A registered agent for service of process appointed by a limited partnership or foreign limited partnership is ~~an~~ a registered agent of the limited partnership or foreign limited partnership for service of any process, notice, or demand required or permitted by law to be served upon the limited partnership or foreign limited partnership.

2. If a limited partnership or foreign limited partnership does not appoint or maintain ~~an~~ a registered agent for service of process in this state or the registered agent for service of process cannot with reasonable diligence be found at the registered agent's address, the secretary of state is an agent of the limited partnership or foreign limited partnership upon whom process, notice, or demand may be served.

3. Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by certified mail or restricted certified mail to the limited partnership or foreign limited partnership at its ~~designated~~ registered office.

Sec. 8. Section 488.201, subsection 1, paragraph b, Code 2016, is amended to read as follows:

b. The street and mailing address of the initial ~~designated-registered~~ office and the name and street and mailing address of the initial registered agent for service of process.

Sec. 9. Section 488.210, subsection 1, paragraph b, Code 2016, is amended to read as follows:

b. The street and mailing address of its ~~designated-registered~~ office and the name and street and mailing address of its registered agent for service of process in this state.

Sec. 10. Section 488.210, subsection 4, Code 2016, is amended to read as follows:

4. If a filed biennial report contains an address of a ~~designated~~ registered office or the name or address of ~~an~~ a registered agent for service of process which differs from the information shown in the records of the secretary of state immediately before the filing, the differing information in the biennial report is considered a statement of change under section 488.115.

Sec. 11. Section 488.304, subsection 1, Code 2016, is amended to read as follows:

1. On ten days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's ~~designated~~ registered office. The limited partner need not have any particular purpose for seeking the information.

Sec. 12. Section 488.304, subsection 4, unnumbered paragraph 1, Code 2016, is amended to read as follows:

Subject to subsection 6, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's ~~designated-registered~~ office if the person complies with all of the following:

Sec. 13. Section 488.407, subsection 1, paragraph a, Code 2016, is amended to read as follows:

a. In the limited partnership's ~~designated~~ registered office, required information.

Sec. 14. Section 488.807, subsection 2, paragraph a, Code 2016, is amended to read as follows:

a. Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located

or, if it has none in this state, in the county in which the limited partnership's ~~designated~~ registered office is or was last located.

Sec. 15. Section 488.809, subsection 5, Code 2016, is amended to read as follows:

5. The administrative dissolution of a limited partnership does not terminate the authority of its registered agent for service of process.

Sec. 16. Section 488.902, subsection 1, paragraph d, Code 2016, is amended to read as follows:

d. The name and street and mailing address of the foreign limited partnership's initial registered agent for service of process in this state.

Sec. 17. Section 488.906, subsection 1, paragraphs c and d, Code 2016, are amended to read as follows:

c. Appoint and maintain ~~an~~ a registered agent for service of process as required by section 488.114, subsection 2.

d. Deliver for filing a statement of a change under section 488.115 within thirty days after a change has occurred in the name or address of the registered agent for service of process.

Sec. 18. Section 488.906, subsection 2, unnumbered paragraph 1, Code 2016, is amended to read as follows:

In order to revoke a certificate of authority, the secretary of state must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's registered agent for service of process in this state, or if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's ~~designated~~ registered office. The notice must state all of the following:

DIVISION II

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

Sec. 19. Section 489.208, Code 2016, is amended to read as follows:

489.208 Certificate of existence or authorization.

1. ~~The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the secretary of state show that the company has been formed under section 489.201 and the secretary of state has not filed a statement of termination pertaining to the company. Any person may apply to the secretary of state to be furnished a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.~~

2. A certificate of existence or certificate of authorization must state set forth all of the following:

a. The domestic limited liability company's name or the foreign limited liability company's name used in this state.

b. One of the following:

(1) That the company was ~~If it is a domestic limited liability company, that the company is~~ duly formed under the laws of this state, the date of its formation, and the period of its duration ~~if less than perpetual.~~

(2) If it is a foreign limited liability company, that the company is authorized to transact business in this state.

c. ~~Whether~~ That all fees, taxes, and penalties due under this chapter or other law to the secretary of state have been paid.

d. ~~Whether~~ That the company's most recent biennial report required by ~~section 489.209~~ this chapter has been filed by the secretary of state.

e. ~~Whether the secretary of state has administratively dissolved the~~ If it is a domestic limited liability company, that a statement of dissolution or statement of termination has not been filed.

~~f. Whether the company has delivered to the secretary of state for filing a statement of dissolution.~~

~~g. That a statement of termination has not been filed by the secretary of state.~~
~~h. f.~~ Other facts of record in the office of the secretary of state which are specified by the person requesting the certificate that may be requested by the applicant.

~~2. The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state all of the following:~~

~~a. The company's name and any alternate name adopted under section 489.805, subsection 1, for use in this state.~~

~~b. That the company is authorized to transact business in this state.~~

~~c. Whether all fees, taxes, and penalties due under this chapter or other law to the secretary of state have been paid.~~

~~d. Whether the company's most recent biennial report required by section 489.209 has been filed by the secretary of state.~~

~~e. That the secretary of state has not revoked the company's certificate of authority and has not filed a notice of cancellation.~~

~~f. Other facts of record in the office of the secretary of state which are specified by the person requesting the certificate.~~

~~3. 2.~~ Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the secretary of state is conclusive evidence that the domestic limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

Sec. 20. Section 489.802, Code 2016, is amended to read as follows:

489.802 Application for certificate of authority.

1. A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state set forth all of the following:

~~a. The name of the foreign limited liability company and, or, if the its name does not comply with is unavailable for use in this state, either a name that satisfies the requirements of section 489.108, or an alternate name adopted pursuant to section 489.805, subsection 1.~~

~~b. The name of the state or other jurisdiction under whose law the company it is formed.~~

~~c. Its date of formation and period of duration.~~

~~d. The street and mailing addresses address of the company's principal office and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required its principal office.~~

~~d. e. The name of the company's initial address of its registered office in this state and the name of its registered agent for service of process in this state at that office.~~

~~f. The name and usual business addresses of each person who is responsible, alone or in concert with others, for performing the management functions of the foreign limited liability company, including:~~

~~(1) The manager of a manager-managed limited liability company.~~

~~(2) The members of a member-managed limited liability company.~~

2. ~~A~~ The foreign limited liability company shall deliver with a the completed application under subsection 1 a certificate of existence or a record of similar import signed by to the secretary of state or other official having custody of the company's publicly filed, and shall also deliver to the secretary of state a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of records in the state or other jurisdiction under whose law the company is formed and which is dated no earlier

than ninety days prior to the date the application is filed with the secretary of state.

Sec. 21. Section 489.1103, Code 2016, is amended to read as follows:

489.1103 Name.

The name of a professional limited liability company, the name of a foreign professional limited liability company or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional limited liability company or foreign professional limited liability company shall contain the words ~~"professional limited liability company"~~ "Professional Limited Company", ~~"professional limited company"~~ "Professional Limited Liability Company", or the abbreviation ~~"P.L.L.C."~~ "PLLC", ~~"P.L.C."~~ or "PLC", ~~"P.L.L.C."~~ or "PLLC", and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the professional limited liability company is authorized to practice. Each regulating board may by rule adopt additional requirements as to the corporate names and fictitious or trade names of professional limited liability companies and foreign professional limited liability companies which are authorized to practice a profession which is within the jurisdiction of the regulating board.

EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

GENERAL. This bill amends the "Uniform Limited Partnership Act" (Code chapter 488) and the "Revised Uniform Limited Liability Company Act" (Code chapter 489). Both Code chapters are administered by the secretary of state.

AMENDMENTS TO THE UNIFORM LIMITED PARTNERSHIP ACT. When referring to a limited partnership's place of business and person specified to receive service of process, the bill changes the name "designated office" to "registered office" and the name "agent for service of process" to "registered agent for service of process" or "registered agent".

AMENDMENTS TO REVISED UNIFORM LIMITED LIABILITY COMPANY ACT. The bill makes changes relating to the information required to be included in a certificate of existence issued to a domestic limited liability company or certificate of authorization issued to a foreign limited liability company. Information required to be included in a certificate is combined into one provision for both domestic and foreign companies. The bill also makes changes relating to the information required to be included in an application for a certificate of authorization, including the limited liability company's date of formation and its principal officers. Its certificate of existence filed in the other state or country accompanying the application must be dated no earlier than 90 days prior to the date of application.

BACKGROUND. A limited partnership and a limited liability company are unincorporated entities that are organized ("formed"), operate, may have perpetual duration, and provide a measure of protection from liability to its investors under state law. In order to form either type of entity in this state, an organic document must be filed with the secretary of state. In the case of a limited partnership, the document is referred to as a certificate of limited partnership and in the case of a limited liability company, it is referred to as a certificate of organization (Code sections 488.201 and 489.201). The secretary of state issues a certificate of good standing to each type of entity. For a "domestic" entity formed under Iowa law, the document is referred to as a certificate of existence and for a "foreign" entity formed under another jurisdiction's law, it is referred to as a certificate of authorization (Code sections 488.209 and 489.208).

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